

8122 f

A Brief

HISTORY

OF THE

SUCCESSION <sup>16.</sup>

TO THE

Crown of *ENGLAND.*

*H.C.* *Crown of.*

WHEREIN

Facts, Collected from the best Authorities, are oppos'd to the novel Assertors of indefeasible Hereditary Right.

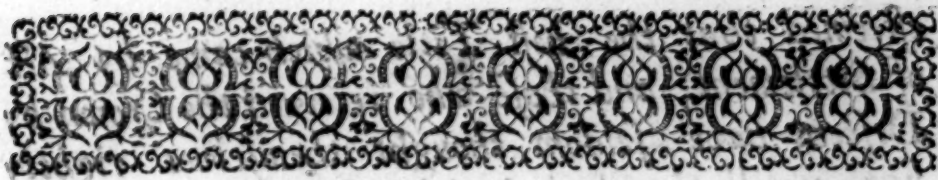
---

L O N D O N :

Printed for and Sold by FERD. BURLEIGH,  
in *Amen-Corner*, 1714.

*Price One Shilling.*





T H E  
P R E F A C E.

**T**H E great Noise that has of late been Revived about the Hereditary Right which the next of Blood in the Royal Family has to the Crown of GREAT BRITAIN, makes me believe the Re-printing the following History at this time may be of Service, especially to such as have not Opportunity or Leasure to peruse our Histories at large. It was Collected and first Published in King CHARLES the II<sup>d</sup>. time, when the endeavour was made to set aside the then Popish Heir, and afterwards Re-printed at the time of the Revolution, to shew in a short Compass what Notion our Ancestors, as well Princes as People in all Times had of this Matter; by which I think it does sufficiently appear, That even our Princes themselves have all of them esteemed



## The PREFACE.

esteemed that the best Title which came by Act of Settlement, and those who received the Crown by Descent have seldom thought themselves rightly fixt, untill they had obtain'd some Act of Recognition.

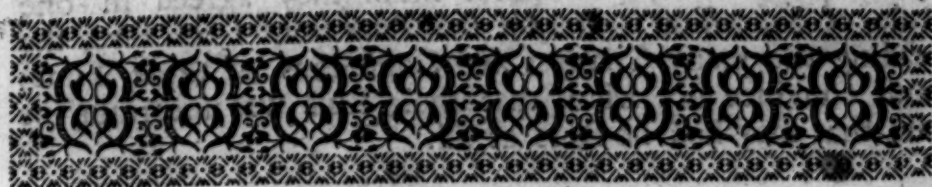
The References in the Margint readily direct how to examin the Truth of the Facts ; and the whole I hope may serve to make us more Cautious then Implicitly to follow those Mens Opinions with relation to the Settlement of the Crown, on which the Welfare of whole Kingdoms depend, whose advice we would not be determined by in the settlement of an Estate of 50 l. per Annum, or a Mortgage for 100 l.



16. IV. 60

A





A Brief  
**HISTORY**  
 OF THE  
**SUCCESSION, &c.**



**M**EN generally, at present, busie themselves in discoursing about the Succession, and therefore cannot but be pleased to have a short History of it set before them: For by seeing how the Crown has descended, and in what manner, and upon what Grounds the natural Course of the Descent hath been changed, they will be enabled to judge what has been the Opinion of all Ages in this so controverted a Point, and thereby may safely direct their Own.

*Cæs. de Bell.  
 Gall. lib. 5.  
 Tacitus in vita  
 Jul. Agricola.  
 Strab. lib. 4.*

Nothing certain has come down to us of the Nature of the Government of this Island before the *Romans* came hither; only this we learn from *Cæsar*, and *Strabo*, and *Tacitus*, That the *Britains* were subject to many Princes and States, not confederate, nor consulting in common, but always suspecting, and frequently warring with one another.

B

During

During the *Heptarchy*, whilst every Kingdom was govern'd by different Laws, we cannot think they agreed in one Rule of Succession: But, if that does not, I am sure, the reading the many Changes and Confusions of those Times must convince any Man, that their Rule was uncertain, or else that they had no Rule at all.

Those seven Kingdoms were at last under *Egbert*: But yet our Historians who lived nearest those Times, express themselves so oddly in this Matter, and do so constantly mention the Election of almost every King before they tell us of his Coronation, that some learned Men have doubted, Whether before the Conquest the Government of this Island was ever grown up into a settled Hereditary Monarchy.

(a) Pol. Virg. Hist. Ang. l. 4. in fin. Will. Malmes. l. 1. c. 2. fol. 16. l. 2. c. 1. fol. 36.

Surely if it were so, yet all must agree, that (a) Then the Succession was not guided by the same Rules, as some Men believe or pretend it ought now to be.

*Egbert* himself, the first English Monarch, came to the Crown, not by Succession but Election, being no way related to *Brissicus*, the last of the *West-Saxon* Kings; and when he died,

(b) Hen. Hunt. l. 5. fol. 348. Will. Malmes. lib. 2. c. 3. fol. 41.

he gave the Kingdoms of *Kent* and *Essex* to his second Son. (b) *Ethelwolf* divided the whole Island between his two Sons *Ethelbald* and *Ethelbert*. (c) *Athelstan* (though a Bastard) succeeded his Father, and was prefer'd to his legitimate Brothers. (d) *Edred*, the younger Brother of King *Edmond*, was advanced

(c) Will. Malmes. l. 2. c. 6. fol. 48.

(d) Will. Malmes. l. 2. c. 7. fol. 55. Reg. Hoved. par. 1. fol. 423. Hen. Hunt. l. 5. fol. 355.

to the Throne, though the deceased Prince had two Sons, *Edwin* and *Edgar*, who did both of them Reign afterward successively. *Edgar* left a Son at his Death; but yet there

(e) De Rege Eligendo magna inter Regni Primores oborta est dissensio, *Simoon Dunelm.* an. 975. fol. 160. *Edwardum Elegerunt Electum consecraverunt, & in Regem unxerunt, Sim. Dunelm. ubi supra.*

happened a mighty Contest about his Successor, (e) some of the great Men contending for the Election of *Egelred* his Brother. But at last the Interest of *Edward* the Son prevail'd, and he was in

a full Assembly Elected, Consecrated, and Anointed King. That which *Ailredus*, Abbot of *Rievallia*, in his Life of *Edward* the Confessor, gives an Account of, seems very remarkable



markable to our purpose. King *Ethelred* (a) (who was no tame and easie Prince) desirous to establish his Successor in his Life-time, (b) summon'd a great Council expressly for that purpose, and proposes the Thing to them, The Council were divided, some of them appearing for *Edmond* his Eldest Son, and some for *Alfred* his Second Son by Queen *Emma*. But at last, upon some superstitious Fancy, they agreed to pass by both of them, and elected the Infant that was in the Queen's Womb. To which Election the King gave his (c) Royal Assent, and the whole Assembly swore Fealty to the Child whilst yet unborn. Undoubtedly this Story makes it plain, that it was not enough at that time to entitle one to the Crown, that he was the King's eldest Son, for then *Ethelred* would never have suffer'd a Debate about the Election of a Successor, nor summon'd a Parliament expressly for that purpose, which you see he thought necessary to be done. And, notwithstanding all his Care, it seems upon the Death of *Ethelred*, *Canutus* had so great an Interest, that by an unanims Consent in a full (d) Council he was Elected King, and all the Issue of the last Prince rejected. 'Tis true, the *Londoners* stood firm to *Edmond Ironside*, (the Approbation of that renowned City had then no little Influence on the Succession) and there were divers Battles fought between them; but at last they came to an Agreement, and *Edmond* dying, the *Dane* ruled the whole Island peaceably whilst he lived.

(a) *Gloriosus Rex Ethelridus Alred Rdr. valis. fol. 372.*

(b) *Fit magnus coram Rege Episcoporum Conventus Reival. ubi supra.*

(c) *Præbet Electioni Rex consensum Alfr. Ab. Reival. ubi supra.*

(d) *Episcopi Abbates Duces Quique nobiliores Anglia in unum congregati pari consensu Canutum in Dominium & Regem Eligere omnem progeniem Regis Ethelredi repudiantes Sim. Dnnelm. an. 1016. f. 173. Brompt f. 903. Rog. Hovedon I par. f. 434.*

Immediately upon the Death of *Canutus*, there was assembled at *Oxford* (e) a great Council to determine who ought to succeed; where, notwithstanding all the Interest which *Godwin* Earl of *Kent*, and the *West-Saxon* great Men could make on the behalf of *Hardiknute*, the legitimate Son of the dead King, they were over-voted, and *Harald Harefoot* (his Bastard, begotten on *Ailena* or *Elgiwa*) was elected. *Harald* dy'd

(e) *Placitum magnum de Regni Successione apud Oxonium factum est, Brompt. 932. Canuto mortuo facta est apud Oxonium magna alteratio de Regni Successione Hen. Kyth. de event. Angl. Hen. Hunt. f. 6. fol. 364.*



(a) *Pist mortem Haraldi Hardiknute Electus Rex*, Hen. Hunt. l. 6, fol. 365.

(b) *Omnes Anglorum magnates ad invicem tractantes de communi Concilio & Juramento statuerunt, quod nunquam temporibus futuris aliquis Dacus super eos in Anglia regnaret.* Brompt. 934.

dy'd in the 5th Year of his Reign, and

(a) then the People were content to accept of *Hardiknute* for their King, and to that end sent for him into *Flanders*; but he dying Issueless, it was ordain'd in a (b) General Council, that never any *Dane* should for the future be admitted to reign in *England*. After which they proceeded to elect *Alfred*, the Son of *Ethelred*, and he being murder'd by the Treachery of Earl *Godwin*, they chose his Brother *Edward*, commonly call'd *Edward the Confessor*. Nor were these Elections of theirs made with any respect to Nearness of Blood, more than those whereof we have heard before; for *Edmond Ironside*, their elder Brother, had a Son then alive,

(c) Brompt. 945.

(c) whose Name was *Edward*, and who was Father to *Edgar Atheling*, living also at the same time. And though this *Edward* had an undoubted Title to the Crown, if Proximity of Blood could have given it, yet the *Confessor* was so far from suspecting any Danger from such a Title, as that he invited his Nephew into *England*, and welcom'd him when he came with the greatest Expressions of Joy, and entertain'd him with the greatest Confidence. Nor had the People any regard to this Royal Blood upon the Death of the *Confessor*, but elected *Harald*, the Son of Earl *Godwin*, who had no Pretence of Kindred to the *Saxon* Line.

These few, among many other Instances which may be given, will shew plainly enough, how Men entituled themselves to the Crown in those days, and that then it was no strange Thing to hear of a Parliaments meddling with the Succession. Therefore I suppose the Men who seem astonished at the boldness of a Parliament, in presuming to speak of it at this time, will say, that they ought not to be troubled with Presidents before the *Norman* Conquest; and that though the *Saxons* might be guilty of preferring a brave and deserving *Bastard*, before a cruel or a silly legitimate Prince, and of many other Irregularities, yet no such Things are to be found in our Histories since the Time of *William* the I. whose Reign is the great *Epoche*, from whence we do compute our Kings. Let us therefore go on more particularly to observe what has been done since that time, and we shall see whether they who wonder so much, have any Reason to do so.

*William.*

*William the Conqueror* was himself illegitimate, and yet succeeded his Father in the Dutchy of *Normandy*, and therefore had no reason to set any great Value upon that sort of Title, which is derived from a Right of Blood. And it seems he did not much regard it; for passing by *Robert* his Eldest, he gave the Crown, (a) by his last Will, to *William Rufus* his younger Son, disposing only with regard to his own Inclinations, the Crown which himself had gain'd.

But his Son was too wise to rely upon this Disposition as a sufficient Title, and therefore had recourse to a more sure one: (b) For calling together the Nobles and wise Men of the Kingdom, he acquainted them in a full Council, with his Father's Will, and desired their Consent to it; who after a long Consultation, did at last Unanimously agree to make him their King, and thereupon he was Crown'd by *Lanfranck*, Archbishop of *Canterbury*. I cannot but observe one Thing farther, that though some Men make use of the absolute Victory which the *Conqueror* had made, and affirm, that thereby the *English* were wholly broken, and all the Old Laws and Customs of the Realm were destroy'd, yet it is plain that at this time the *English* Interest was so great, that it kept the Crown upon *William Rufus's* Head, in spite of all that the *Normans* could do in behalf of *Robert*, though they universally joyn'd with him. (c) For the King calling together the *English*, and opening to them the Treason of the *Normans*, and (d) promising them a compleat Restitution of their Ancient Laws, they stood firm to him, and soon put an end to all the Attempts of his Brother, and his *Norman* Accomplices.

1038. Fol. 214. (d) Angli cum fideliter juvabant, &c. Sim. Dunelm. ubi supra.

Upon the Death of *William Rufus*, *Robert* had a fair Pretence to renew his Claim to the Crown, (a) but that Prince had discover'd too much of the Cruelty of his Disposition, of his Aversion to the *English* Nation, and of his Proneness to Revenge; so that by the full Consent and Council of the whole Body of the Realm, Assembled at *Winchester*, he was finally Rejected, and they did concur to Elect the *Conqueror's* Third Son *Henry* for their King, (as *Mat. Westminster* expresses it.) Nor did

(a) A parte ultima valitudine decumbente in Successorem adoptatus.

Guil. Malmsh. lib. 4. fol. 120. Sim. Dunelm. an. 1037. fol. 213. Brompt. f. 980. (b) Convocatis terra magnatibus. Brompt. 983.

Optimates frequentes ad Westmonasterium in concilium convenere, ubi loci post longam Consultationem Gulielmum Rufum Regem fecere. Mat. Paris. Flores hist. fol. 231. Valentibus omnium Provincialium animis in Regem acceptus. Mat. Paris. in vit. Guil. 2. Fol. 14. anno 1088.

(c) Rex fecit convocare Anglos. Sim. Dunelm. an.

(a) Hic Robertus semper contrarius & adeo innaturalis extiterat Baronibus Regni Anglia, quod plenario consensu & consilio totius communitatis Regni, ipsum recusaverunt & pro Rege omnino recusaverunt, & Henricum fratrem in Regem elegerunt. H. de Knyght c. 8. 2374 Post mortem Willielmi Rufi electus est Henricus frater ejus M. Paris 55. in vi. H. 1. an. 1100. & 62 anno 1105. Mat. We 235. Apud Winton in Regem electus & Brompt 997.

they



they do this but upon Terms; for both the Clergy and Laity said, That if he would restore them their Ancient Liberties, and confirm them by his Charter, and abrogate some severe Laws which his Father had made, *They would consent to make him King.* And this Prudent and Learned King was not ashamed or unwilling to own this Title; for he does at large recite it in his Charter, whereby he confirms their

(b) Rich. Hagulstad. 310. Brompt. 10. 21.  
Mar. Paris. 240.

Liberties, (b) *Sciatis me misericordia Dei, & communi consilio Baronum Regni Angliæ, ejusdem Regni Regem Coronatum esse, &c.*

(c) Coacto Concilio fecit omnes Principes & Potentes Anglicani Regni adjurare terram & Regnum Willielmo filio suo, &c. Gervas. Cron. 1138.

Henry I. you see had Reason to believe and own the Power of the Kingdom, in setting the Crown upon what Head they pleas'd, and therefore he desir'd to secure it that way to his Posterity. To that End, in the 13th Year of his Reign, (c) he summon'd a Council, and procur'd all the great and powerful Men of the Kingdom to swear that his Son *William* should succeed him. But afterwards this Son of his was unfortunately drown'd, and the King dy'd, leaving no other Issue but *Maud* his Daughter, who had been married to the Emperor, and afterward to *Geoffery Plantagenet*, Earl of *Anjou*. No Dispute can be made, but that she had all the Right which Proximity of Blood could give; yet *Stephen*, Earl of *Boloign*, who was the Son of *Adela*, one of the Conqueror's Daughters, and whose Elder Brother *Theobald*, Earl of *Blois*, was then living, stept in before her, and by representing to them the Inconvenience of a Feminine Government, and promising them to consent to such good and gentle Laws as they should devise, prevail'd (d) with the Estates of the Realm to elect him King. And in his Charter, which he made soon after, he owns this Title, beginning it thus, *Ego Stephanus Dei gratia, assensu Cleri & Populi, in Regem Angliæ Electus, &c.* And the Pope, in his Charter of Confirmation, sent to him in the First Year of his Reign, tells him, that he was *Communi voto & unanimi assensu tam Procerum quam etiam Populi in Regem electus.* And then he adds, That since so universal an Assent could not be directed but by the Divine Grace, he therefore allows his Title, and confirms him in the Kingdom.

(d) A primoribus Regni cum favore Cleri & populi Electus est à Wil. Cant. Archiepiscopo in Regem Consecratur. R. Hagulstad. an. 1156. Fol. 312.

Consentientibus in ejus promotionem Willielmo Cantuariensis Archiepiscopo & Clericorum & Laicorum Universitate apud London, Jo. Hagulstad 250. Predictus Stephanus à cunctis in Regem Electus, Gervas Chron. f. 340. Congregatis Londoniis terræ magnatibus, Mar. Paris 74.

'Tis



'Tis True that afterwards *Mawd* the Empress, together with her Son *Henry*, having, after some Years, gain'd many to their Side, gave him great Disturbance; till at last *Stephen* having lost his Eldest Son *Eustace* (in whom he placed his Hopes (a) and used all means, whilst he Liv'd, to have got him declar'd his Successor, but without Success) came to an Agreement with the Empress and her Son, and (b) the Parliament, (who alone could give a Sanction to such Agreement,) was assembled at *Winchester* to confirm it; and then *Stephen* publickly Adopts *Henry* for his Son, (his Mother *Mawd* who had the Hereditary Right, was then alive;) and with their full Consent declares him his Heir; and with the same Consent *Henry* gives *Stephen* the Name of Father, and agrees that he should continue to be King, during his Life, and they all swore, that if *Henry* surviv'd, he should without Opposition obtain the Crown, and *Stephen* by his Charter, which is set down at large in *Brompton* publishes this Agreement, *Brompt.* 1037.

(a) *Hen. Hunt* l. 8. f. 395, R. *Hag. de gessis.* *Steph.* 314.  
(b) *Faëto* *Wintonia* conventu publico, Rex *Stephanus* ipsum Ducem cunctis videntibus adoptavit in Filium, utque, in proposito omnium Juramento, concessit & confirmavit ei totius *Anglia* principatum, Dux autem suscepit eum in locum genitoris.

ris, concedans ei omnibus diebus vite sue nomen & rem Regii culminis obtinere *Gervas.* f. 1375. In conventu Episcoporum & aliorum de Regno optum. *Mat. Westm.* f. 246: an. 1153. & 282, an. 1154. Consenserunt in hoc omnes principes Regni *Jo. Hagulstad* f. 282. *Mat. pacis* 86, *Hen. Hunt.* l. 8. f. 398. *Ja. Hagulstad.* 282, an. 1154.

In all this Transaction certainly there was no Consideration had of any other Right, but that which universal Consent conferred; For if *Stephen's* Heir had any Pretence, he had a Son then living, whose Name was *William*, and who by the same Agreement was to have all the Possessions which his Father enjoy'd before he was made King. If the Heir of *Henry I.* had any Title that was vested in *Mawd* the Empress, who was then also living; so that neither of the Parties had any other Colour of Right to the Crown, than what the consent of the People gave them.

According to this Parliamentary Agreement and Limitation, *Stephen* enjoy'd the Crown peaceably during his Life, and after his Death *Henry* the Second came to it as peaceably; but he remembred by what Title, and therefore was desirous to secure it to his Son in the same manner, that he took a very dangerous and unusual way to do it.

(c) For Summoning a Parliament to Meet at *London*, he procures his Son *Henry* to be Declared King, together

(c) Convenerunt interim die statuto ex mandato Regis *Londoniam* totius *Anglia* Episcopi Abbates Comites Barones vicecomites prepositi Aldermanii cum fidejussoribus, *Gervas.* H. 2. F. 1412.

with

with himself, by their Consent, and thereupon he was Crown'd by the Archbishop of York, and Fealty Sworn to him by all. This was the Occasion of Civil Wars between them, for the Father meant hereby only to have secured the Succession to him, and the Son was impatient of having only the bare Title of a King, all along pretending to an Equal Authority, as doth sufficiently appear by what he writes to the Prior and Convent of Canterbury, where he takes notice that his Father did attempt some Invasions upon them, which he ought not to have done without his Assent. (c) *Qui, ratione Regie unctionis, Regnum, & totius Regni curam suscepimus*, and therefore he appeal'd to the Pope in that behalf. Nay the Father himself paid that Respect to his Son's Dignity, that when he had at last subdued him and his Rebellious Brothers, (d) he would not suffer him to do him Homage with his other Sons, (though he offer'd it.) But Henry the Son dying in the Life of his Father, Richard was then his Eldest Son surviving, and consequently had all the Right which a next Heir could claim. But the wise and wary King had not confidence enough to rely upon this (now so much talk'd of) sacred Right, but tho' he had already suffered so much from disobedient Sons, was glad to get the Succession confirmed to him in his Lifetime. And the Truth is, there was reason enough that he should do so, for he had all his Children by Eleanor, the Daughter of William Duke of Guyen, (\*) who was before the Wife of Lewis the VII. King of France, who was still living, and she only divorced *causa Adulterii*, which being not a Divorce, *a vinculo Matrimonii*, she could not, either by the Canon-law, universally receiv'd, or the Laws of England, lawfully marry with any other Husband.

After his Father's Death, Richard came to London, to which Place all the Clergy and Laity were summoned, and (a) after he had been solemnly and duly Elected by the whole Clergy and Laity, (they are the very Words of the Historian) and taken the usual Oaths, he was Crowned. And when he undertook the Holy War, he (b) declared Arthur Son of his next Brother Geoffery the Duke of Britain, the next Heir to the Crown.

Richard

(c) Gervas H.  
2. F. 1425.

(d) Brompt.  
F. 1100.

(\*) M. Paris 84.

(a) Post tam cle-  
ri quam populi  
solemnem & de-  
bitam Elestio-  
nem Rite dicto.  
fol. 647. R. H.  
par. 2. f. 6. 56.  
(b) Fol. Hist. an.  
1190.



*Richard* dying without Issue, this *Arthur* ought to have succeeded, and his Sister *Elleanor* also had the Title before her Uncle. But *John* the younger Brother without regarding this Divine Right of his Nephew, applies himself to the People for a more sure, tho' but a Humane Title; (a) who being summon'd together, Elected him King. And (b) *Hubert* the then Archbishop of *Canterbury*, did at his Coronation, Preach a Doctrine, which would have sounded very strangely to the Convocation, in 1640. (viz.) No one could make any Title to the Crown, nisi ab universitate Regni unanimiter Electus. And that he who was most worthy ought to be preferred. But (as he goes on) if any one of the Race of the Deceased King, was more deserving than others, as *John* the Brother of the Deceased King was, the People ought more readily to Elect him, than a Stranger to the Royal Blood. This was all the Title King *John* pretended, and this was then sufficient to put by his Nephew. And in his (c) Charters, he does more than once own, that he owed his Crown to the Election and Favour of his Subjects.

(a) Prelatorum Comitum & aliorum Nobilium multitudo infinita, *Brompt.* 1281.

(b) *Mat. Paris*, 197. An. 1199. Si aliquis ex stirpe Regis Defuncti aliis praeponitur prius & promptius in Electionem ejus esse consentiendum.

(c) Charta Moderationis feodi Magni sigilli, an. 1. Jo. ex ver. Reg. in Archivis Arch. Cant. be

*says he came to Crown, Jure Hereditario & mediante tam Cleri quam populi unanimi Consensu & Favore.*

But when King *John* gave over to dissemble his Nature, and went about to change his Religion (d) (for he made offers of that sort to the King of *Morocco*) when he discovered himself not to be that worthy Man which the People supposed him to have been; they remembered whence he derived his Title, and proceeded, upon the same Reason that they had chosen him, to make a new Election, (e) Choosing *Lewis* Son of *Philip* of *France*, who was next Heir to the Crown in the Right of *Blanche* his Wife, Niece to King *John*, and Daughter to his Sister *Elleanor*, both the Children of *Geoffrey* Duke of *Britain*, being dead before that time.

(d) Necnon & Degem Christianum. Quam vanum censuit relinquens Legi Mahometis fideliter adhereret, *Mat. Paris* 143.

(e) *Mat. Paris* 279. Flo. Hist. an. 1216.

When King *Philip* heard of their choice, he consented to  
C send



(a) Volens  
fratrem suum  
Regem Ricar-  
dum a Regno  
Anglia injuste  
privare & inde  
de prodicione ac-  
cusatus & Coram  
Paris. 281.

send his Son, being the rather induced thereto by this Reason,  
(a) That *John's* Blood being corrupted by an Attainder of  
Treason, in the Life-time of his Brother *Richard*, he was  
uncapable of taking the Crown by Descent, and unworthy  
to take it any other way.

eo convictus, Damnatus fuit per judicium in Curia ipsius Regis, *Mat. Westm.* 275, *Met.*

(a) *Mat. Westm.*  
275. *Hen. de*  
*Knyght* f. 2426.  
c. 15. i. 2.

*Lewis* coming to *London* was there Elected and Constituted  
King, swearing to preserve the Peoples Laws, and they swear-  
ing Allegiance to him: But he soon forgot his Coronation-  
Oath, and attempted several ways to introduce an Arbitrary  
Government, before he was well Established in his Throne,  
which the *English* as soon resented; And King *John* happen-  
ing to die very opportunely, The *Earl Marshal* calling toge-  
ther the Great Men of the Kingdom, and placing *Henry III.*  
then an Infant, in the midst of them, perswaded them to  
make him King, who was altogether innocent of his Father's  
Faults: (b) The *Earl of Gloucester* said this was contrary to their  
Oath to *Lewis*, to which the *Marshal* replied, that *Lewis* by  
breaking his Oath had absolved them from theirs, and that  
he despised the *English* to set up the *French*, and that he would  
be the Destruction of the Realm. With whose Reasons the  
whole Assembly being convinc'd, cry'd out unanimously,  
*Fiat Rex*; And accordingly they Crown'd King *Henry III.*  
and soon after compelled *Lewis* to re-renounce all Pretences  
to the Crown.

*Hen. de Knyght*  
f. 2472. c. 16.  
i. 2.

(c) The Descen-  
dants of *Edmond*  
who were Dukes  
of *Lancaster* end-  
ed in a Daughter,  
*Blanch* who was  
married to *John*

a *Gaunt* made therefore Duke of *Lancaster*, and whose Issue claims a Right to the Crown by this *Blanch*.

After

After the Death of *Edward I.* his Son *Edward II.* Succeeded, but he pegerenerating from so great a Father, the People grew weary of his Irregular and Arbitrary Government. And a Parliament being by him Summoned at *Westminster*, as all our Writers say, or as *Polydor Virgil* words it, *Principes Convocato Concilio pervenerant Londini* (which I observe only that we may know what *Polydor* means, when he makes use of the Expression of *Principes in Concilio Congregati* ; ) They presently entred into the Consideration of the miserable State of the Nation, and a Paper being publicly read, containing many Instances of the King's Misgovernment, all which he had confess'd, they concluded he was unworthy to Reign any longer, and that he ought to be depos'd, and sent to him to let him know their Resolution, and to require him to renounce his Crown and Royal Dignity, otherwise they would proceed as they thought good. And they appointed Commissioners to go to him in their Names : The Bishop of *Ely* for the Bishops, the Earl of *Warren* for the Earls, Sir *Henry Piercy* for the Barons, and Sir *William Trussel* for the Commons, to resign their Homage up to him, which *Trussel* pronounc'd in all their Names, and formally depriv'd him of all Royal Power, the Form of which is particularly set down by *Knyghton* : The King read this sad Sentence with extraordinary Grief, and many Complaints of those evil Counsellors who had seduc'd him ; but in the midst of his Sorrow (a) he gave them Thanks they Elected his Son to Reign after him. Thus was that glorious Prince *Edward the Third*, Elected King in his Father's Life-time, & *huic Electioni universus populus consensit*. *Walter*, Archbishop of *Canterbury*, who Preach'd the Coronation Sermon, took this for his Text, *Vox Populi, vox Dei*. By this we may see that all his Predecessors were not of Bishop *Lard's* Mind, but thought there was a Divine Right some-where else than where he plac'd it. Upon the Death of *Edward the Black Prince*, there was some Dispute Whether *John of Gaunt*, the eldest surviving Son of *Edward the Third*, should succeed *Jure propinquitatis*, or *Richard*, the Son of *the Black Prince* : Whereupon, *Edward the Third* procur'd the Parliament to confirm the Succession to *Richard the Second*. And afterwards, when *Edward the Third* dy'd,

Tho. Walsingham, in Vit. Ed. 2. f. 126.

Pol. Virg. l. 18. f. 352.

Froissart 1. vol. c. 14. Frustrum Temporum, part 7. f. 107. Hen. de Knyghton, l. 3. c. 15. f. 2549.

(a) Quod Filium suum Edwardum post se Regnatum Eligissent, Knyght. 2550.

Pol. Virg. 20. f. 295. Juri Hereditario ac etiam voto communi singulorum, H. Knyght l. 5. f. 2630.



Rot. Parl.

1 H. 4.

Pol. Virg. 1. 5.

(b) *Polidorus Virgil* says, *Principes Regni habito Concilio apud Westm.* (you know what *Polidor* means by *Principes*) *Richardum, Edwardi Principis Filium, Regem Dicunt*, by their common Suffrages.

In the 21st Year of *Richard's* Reign, a Parliament being Assembled at *Westminster*, they drew up, by their common Consent, a Form whereby he did resign the Crown, and the Name and Power of King, Discharging all his Subjects from all Oaths, which they had taken of Allegiance to him, confessing himself thereby insufficient for the Government, and Swearing never to make any Pretences to the same for the future. All which he Pronounced and Subscribed, wishing, (if it were in his Power,) to have *Henry* Duke of *Lancaster* for his Successor, but since it was not, he desired the Commissioners to signify his Desires to the States of the Realm. The next Day all the States of the Realm accepted his Resignation, and when that was done, they proceeded to Read publicly his Coronation-Oath, and all the Breaches of it, that so it might appear how justly he had deserv'd to be deposed. All which are contain'd in 33 Articles, Enter'd at large in the Rolls of Parliament, (and well deserve to be Read) whereupon the States adjudges that he shall be Depos'd, and appoint Commissioners, *Ad Deponendum eundem Richardum Regem ab omne Dignitate, Majestate & honore Regis, vice nomine & Auctoritate omnium statuum prædictorum, prout in Consimilibus casibus de antiqua consuetudine dicti Regni fuit observatum*, which the Bishop of *St. Asaph* did, in full Parliament, in their Names, and by their Directions. The same Commissioners were also to Resign up to him their Homage and Fealty, and intimate the Sentence of Deposition, which they did accordingly, by the Mouth of *Sir William Thirning*, whose Words are at large enter'd upon Record. Then did the Parliament proceed to chuse *Henry IV. King*; And upon this Title only did he rely, (though he mention'd some other trifling ones, as that he Challenged it, being then Void by Force, as Descended to him from King *Henry III.*

See supra. 6.

But this could give him no Title, for 'tis plain that whilst any of the Issue of *Lionel Duke of Clarence*, the Third Son of *Edward*



Edward III. were in being, no Right of Blood could Descend to him, who derived his Pedigree only from *John of Gaunt*, 7. H. 4. cap. 2. who was but his Fourth Son. And he plainly shewed what a good Opinion he had of a Parliamentary Title to the Crown, when in the 7th. Year of his Reign, he procured an Act of Parliament to pass, whereby the Inheritance of the Crown and Realms of *England* and *France* were settled upon himself for Life, and the Remainder entail'd upon his Four Sons by Name, and the Issue of their Bodies begotten. He was contented that it should be limited no farther, but that, after failure of his own Issue, it should go according to the general direction of the Law. And he made a Charter soon after, whereby he settled the Crown pursuant to this Act of Parliament: *Post ipsum successive heredibus suis de ipsius Corpore legitime procerandis*; which Charter was again confirm'd in Parliament, the 22d of December, 8 Hen. IV. and the Original Charter is still to be seen in the Cotton Library.

Bucks Hist.  
R. 3. l. 2. f. 50.

Immediately upon the Death of *Henry* the IV. a Parliament met at *Westminster*, and there, according to the Custom of the Realm, it was debated who should be King: But all Men had entertain'd so good thoughts of Prince *Henry*, that without staying till the whole Assembly had declared him King, divers of them began to swear Allegiance to him. A thing strange and without President, as only occasion'd by the extraordinary Opinion which was generally conceived of him before.

And the certain Title vested in him by an Act of Parliament.

*Principes Henricus, facto Patris sui funere, Concilium Principum apud Westmonasterium Convocandum Curat, in quo de Rege Creando, more Majorum, agitabatur. Continuo aliquot Principe altro in ejus Verba Jurare caperunt, quod Benevolentia Officium Nulli, priusquam Rex renunciatus esset, prastitum constet. Ad eo Henricus ab ineunto atato spem omnibus*

*omnibus optima indolis fecit*, Pol. Virg. l. 22.  
Hist. Angl. in Vit. fl. 5.

Titus Liv. Mf.  
in Bibl. Bod.  
Cott. Record,  
f. 666.

Henry the Vth. dying, and leaving but one Son, who was an Infant of eight Months old, *Titus Livius* says, there was some doubt whether he should be accepted as King; but as soon as his Father's Funerals were Solemnized, the Estates of the Realm of England, Assembling and Consulting together, they declared Henry VI. to be their Sovereign.

Hubington's  
Hist. E. 4. f. 10.

Cott. Rec. 670.  
Fructus Temp.  
part 7. f. 162.

Hubingt. E. 4.  
f. 73.

In the 35th Year of Henry VI. a new Limitation of the Crown was made by Parliament, for tho' the King had a Son then living, yet it was Enacted, That during his own Life only Henry VI. should hold and enjoy the Crown, and that during his Life Richard Duke of York should be reputed and stiled Heir Apparent to the Crown, and that it should be Treason to compass his Death; and after the Death, Resignation, &c. of Henry, the Crown was limited in Remainder to Richard and his Heirs, with a Proviso, that if Henry, or any in his behalf, should endeavour to disanul or frustrate this Act, that then Richard should have the present possession of the Crown. And by force of this Act of Parliament, the same Duke of York, taking advantage of Henry's Violation of it, did lay claim to, and attempt the recovery of the Kingdom, as also did his Son Edward after him with better success; and Edward did openly insist upon this Title in the Speech which he made at his Coronation.

It was also declar'd by Edward's first Parliament, in the first Year of his Reign, that Henry VI. having broken the aforesaid Concord in many particulars, the Crown was duely devolved to Edward IV. by virtue thereof.

Afterwards Edward the IV. being driven out of the Kingdom, in the 10th Year of his Reign, the Parliament did again entail the Crown on Henry VI. and the Heirs Male of his Body, without Remainder to George Duke of Clarence, Brother to Edward IV. who was thereby also declared Heir to Richard Duke of York.

'Tis



'Tis worthy Observation, that both the Families of *York* and *Lancaster* claim'd a Title by Act of Parliament; and as long as that Title continu'd; the Issue of *Henry IV.* had never any Disturbance from the Pretences of the House of *York*, who had undoubtedly the Right of Blood on their Side: But as soon as *Richard Duke of York* had a Title vested in him, by the Statute made in the 39th Year of *Henry VI.* then he thought it was worth Contending for; nor did he and his Son desist till they had driven out *Henry VI.*

*Buck's Hist.*  
*Rich. 3. lib. 1.*  
*fol. 10.*

*Edward IV.* did recover the Kingdom again as suddenly as he lost it, and prevail'd with his Parliament to Repeal that Law which was made during his Expulsion, and so left the Crown to that Young Unfortunate Prince *Edward V.* who held it not long enough to have it put on him with the usual Solemnity; for though he was Proclaimed, he was never Crown'd King: For his Uncle *Richard Duke of Gloucester* having secured him and his Brother in the Tower, did cunningly insinuate the Bastardy of his Nephew, and that *Edward IV.* had another Wife Living at the time of his Marriage to their Mother, and also at the time of their Birth.

The Report found Credit universally, in so much that the Duke of *Buckingham* coming to him at *Baynard's-Castle*, with most of the great Lords and wise Men of the Kingdom, and the Mayor and Aldermen of *London*, the Duke did in their Names acquaint him, that they had unanimously thought fit to Elect him King, as being Heir to the Royal Blood of *Richard Duke of York*, upon whom the Crown was Entrail'd by the High Authority of Parliament.

'Tis very remarkable, That in the midst of their highest Flatteries and Courtship to him, they tell him only of this great and sure Title by Act of Parliament, although if he had been indeed (what was pretended) the Heir of the House of *York*, his Right by Descent from *Edward the III.* was unquestionable.

*Richard*

Corr. Res. fol.  
709

Buck's Rich. 3.  
kb. 1. fol. 22.

*Richard* (after some feign'd Excuses) did at last accept of their Offer and Election; and the Parliament being soon after Assembled, they presented a Bill to this effect: *Please it your Grace to understand the Consideration, Election and Petition under-written, of the Lords Spiritual and Temporal, and of the Commons, &c.* And thereby they Declare the Children of *Edward IV.* Illegitimate, and that his Brother *George Duke of Clarence* was attainted of High-Treason by Parliament, in the 7th Year of *Edward the Fourth's* Reign, by reason whereof all the Issue of the said *George* were, and are disabled and barr'd of all Right and Claim, that in any Case they might have or challenge by Inheritance to the Crown and Dignity Royal of this Realm, by the ancient Laws and Customs of the same. After which, considering that none of the uncorrupted Lineal Blood of *Richard Duke of York* could be found but in his Person, (say they) We have chosen and do choose you our King and Sovereign Lord. Then the Bill proceeds in reciting, that all the Learned in the Laws do approve his Title, and declaring him King as well by Right of Consanguinity and Inheritance, as by lawful Election, and Entails the Crown on him and the Heirs of his Body, and declares his Son Heir Apparent. To which the King gave his Royal Assent in these Words: *Et idem Dominus Rex, de Assensu dictorum trium Statuum, Regni, & Autoritate prædicta, omnia & singula præmissa, in Billa prædicta contenta concedit, & ea pro vero & indubio pronunciat, decernit, & declarat.*

But the barbarous Murder of his Nephews did soon beget such an universal Detestation of *Richard* in the Minds of the People, that they resolv'd he should no longer Reign over them; and so, taking hold of a Pretence which *Henry Duke of Richmond* set up, they joyn with him against *Richard*. Tho' *Henry's* Title was indeed no more than a mere Pretence; for not only the Right of the House of *York*, (as far as Blood could give Right) was before that of the House of *Lancaster*, but also he had no manner of Interest in that Title which the *Lancastrian Line* had, since his Claim was under a (a) Bastard, begotten in Adultery; and besides his Mother, *Margaret Countess of Richmond*, as Heir to whom he pretended he claim'd, was then living. Therefore *Comines*, the most judicious

(a) And tho' Legitimated by Parliament, yet the Royal Dignity was excepted.



judicious Writer of that Age, and who knew well what was the Sence of *Europe* concerning his Title, says plainly, (though he wrote in the Time of *Henry VII.*) *Qu'il n'avoit Croix, ne Pile, ne nul Droit (come Jeo Croy) ala Courone d'Angleterre.*

Nevertheless *Henry* having slain *Richard* in *Bosworth-Field*, the Crown was there put on his Head by the Lord *Stanley*, with the general Acclamation of the People. But he was wise enough to think his Title to it was not very good, till it was made so by an Act of Parliament, and therefore in the first year of his Reign he procured one to pass in these Words :

*For the Wealth, Prosperity, and Surety of this Realm of England, and for avoiding of all Ambiguities and Questions (The wisest of our Princes you see had no little Opinion of the Authority of a Parliament in this point.) Be it ordained, &c. That the Inheritance of the Crown of the Realms of England and France, with all the Preheminences and Dignities Royal to the same appertaining, and the Ligeances to the King belonging, beyond the Seas, &c. shall be, rest, remain and abide in the most Royal Person of our Sovereign Lord Henry VII. and in the Heirs of his Body lawfully coming perpetually, with the Grace of God, and so to endure, and no other.*

*Bucks Rich. 3.  
lib. 5. fol. 145.*

Thus did the wisest of our Kings Establish himself, and the best of our Historians mentions it as one of the greatest Instances of his Wisdom; That he did not press to have this as a Declaration or Recognition of Ancient Right, but only as an Establishment of the Possession which he then had, nor to have the Remainder limited to any Person after the Determination of his Estate, but was content with the Settlement upon himself, and the Issue of his own Body, leaving it to the Law, to decide what was to follow upon the Failure of such Heirs.

*Lord Bacon H. 7  
f. 11, 12.*

D

Nor

Burnet's Hist. of  
the Reformation,  
Collect. ad lib. 2.  
fol. 3, 4.

Nor can any thing be more clear, than that *Henry VII.* depended entirely on this Parliamentary-Title, without extending any Pretences of his, or his Wife's, (who was Heir of the House of *York*) beyond this Establishment, in as much as the Oaths of Allegiance and other publick Tests and Securities, which were required at that time of the Subjects, were not in general Terms, to the King, his Heirs, and Successors, but only to the King, and the Heirs of his Body lawfully begotten. An Instance of this, (without going any further) may be seen amongst the Records Printed at the end of the late History of the Reformation, where Cardinal *Adrian*, when he was promoted by *Henry VII.* to the Bishoprick of *Bath and Wells*, renounces all Clauses in the Popes Bulls, which may be prejudicial, *Domino meo supremo, ad Hæredibus suis corpore suo legitime procreatis, Angliæ Regibus*, and he does afterwards swear Allegiance to him in the very same Words, without taking any notice of Remoter Heirs.

St. 25 H. 8. c. 12.

*Henry VIII.* the Heir to this Entail, Succeeded his Father, though he attempted as much for Arbitrary Power, and used Parliaments with as little Respect as any of his Predecessors; Yet even he, never doubted of their Power in settling the Succession, but valued it much, and resorted to it frequently.

In the 25th Year of his Reign an Act passed, wherein the Parliament say, They were bounden to provide for the perfect Surety of the Succession; (they did not certainly reckon themselves bound to do a thing that was not in their Power.) And then they take notice of the great Mischiefs and Effusions of Blood which had happened by reason of the Doubtfulness of the true Title, and for the avoiding of all future Questions, do Enact, That the Imperial Crown of this Realm, shall be to King *Henry VIII.* and the Heirs of his Body lawfully begotten on *Queen Anne*, and the Heirs of the Bodies of such several Sons respectively, according to the course of Inheritance, and for Default of such Issue, then to the Sons of his Body in like manner, and upon failure of such Issue, then to the Lady *Elizabeth*, and after her to any other Issue in Tail, and then the Remainder is limited to the right Heirs of *Henry VIII.* By the same Statute every Subject at



at his full Age is obliged to take an Oath to defend the Contents of it, and the Refusal is made Misprision of Treason. And the next *Parliament*, which was held in the Year following, does particularly Enact an Oath for that purpose. 26 H. 8. c. 2.

Some few Years after these Acts were Repealed, and the *Parliament* Entailed the Crown upon the King, and the Heirs of his Body by Queen *Jane*; And Power is given the King for want of Issue of his Body to dispose of the Succession by his Letters Patents, or his last Will. 28 H. 8. Rest. Crown 4.

It is also made Treason, if any Usurp upon those to whom it is so appointed. Here the *Parliament* do not only use their Power of changing the Succession, but they Delegate it to another.

And in the *Thirty-fifth* Year of this King's Reign, the *Parliament* by another Act take notice of the great and high Trust which the Subjects had in him, in putting into his hands wholly the Order and Declaration of the Succession; Yet the King being then ready to go into *France*, they do Enact, That after his Death, and the Death of Prince *Edward*, without Issue, the Crown should be to the Lady *Mary*, and the Heirs of her Body, but both subject to such Conditions as the King should limit by his Letters Patents or by his last Will, sign'd with his Hand: And if the Lady *Mary* performed not those Conditions, that then the Crown should go to the Lady *Elizabeth*, as if the Lady *Mary*, had been dead without Issue; and if the Lady *Elizabeth* neglected to perform such Conditions, then it should go to such other Person as the King should appoint, in the same manner as before, as if the Lady *Elizabeth* had been dead without Issue. And Authority is given to him, by his Letters Patents, or his last Will, sign'd with his own Hand, to appoint the Crown to remain to such Person or Persons, and for such Estate, and under such Conditions, as he should please. 35 H. 8 cap. 1.

An Oath also for observing this Statute is appointed, and it is made Treason to refuse it, or to disturb or interrupt any Person

Person to whom it is limited by this Act, or should be by the King pursuant to the Power given him thereby.

This is abundantly sufficient to prove, That it was *the universal Opinion of that Age, That the Succession was wholly under the Controul of Parliaments*, who not only limited it as they pleased themselves, but *subjected it to Conditions, and to the Appointments of others*. But the thing was in its own Nature so evident, that they who had the greatest Reason, and were most concern'd to do it, did never presume to question the Power of a Parliament in this Point.

Burn. Hist. Reform. Collect.  
268.

*Letbington*, Secretary of Scotland, in a Letter of his, written to Sir *William Cecill*, then Secretary of State here, wherein he argues in behalf of the Title of his *Mistress*, Mary Queen of Scots, to succeed Queen *Elizabeth*, against a pretended Disposition, made by the last Will of *Henry VIII.* to his Niece, the Lady *Frances*, Daughter to the *French Queen*, if his own Issue fail'd, says of these Statutes, that gave the King Power to dispose of the Crown, That they were against Equity to disinherit a Race of foreign Princes, and that they were made in an abrupt Time, (as he terms it) but yet he confesses, that since the thing was done, it was now valid and unavoidable, unless some Circumstances did annihilate the Limitation made by King *Henry's* Will.

And so he proceeds to prove, that the power which was given to the King by these Statutes, was not pursued, (which it ought to have been most strictly, and in a precise Form,) for that the King never signed the Will, but that his Name, set to it, was forged: Nay, I will venture to say that in all the Books which were written to support the Claim of the *Scottish Queen* against King *Henry's* Will, (though the whole Power and Wealth of the *Guises* were employed to set every Wit at Work on that Design) there was never any stress laid upon it, or so much as a pretence that these Acts of Parliament were void or ineffectual in themselves. In that Discourse which was published by *Philips*, and composed by Sir *Anthony Brown* one of the Justices of the Common Pleas, who was (in Judge *Dodderidge's* Opinion) a Person of an incomparable

The title of  
the Title of  
Queen Mary to  
the Succession,  
pag. 38, 39. &c.  
lib. 2.  
Dodd, Engl.  
Lawyer. pag. 8.



comparable sharpness of Wit, There was all the help that Learning either in Divinity, Civil or Common Laws could give; yet there the Authority of the Parliament in the case, and the validity of these Statutes is all along admitted. Indeed they endeavour to put some other construction upon the Statutes; but their great Argument is, That King *Henry*, as King, had no Power to dispose of the Crown, and therefore these Laws only gave him an Authority, and made him only as it were a Commissioner, and therefore, as all other Authorities, (especially being in Derogation of the course of the Common-Line,) was to be strictly followed. They allow that he had sufficient power to Devise, and that he might Honourably have used that Power; but that he ever did exercise that Authority, is the thing denied. But it is time for us to go on.

*Edward* the VI. succeeded his Father, and took upon him a Power, which surely no King ever had, to dispose of the Crown by Will. But that disposition serving to no other purpose but to the Ruin of the Lady *Jane Gray*, His Sister Queen *Mary* first, and after Queen *Elizabeth* enjoy'd the Crown according to the limitation of the Statute 35 *H. VIII.* c. 1. and that one of them had no other Title, must be agreed by all: For Queen *Catharine* was alive at the time when *Elizabeth* was born: so that if the first Marriage was unlawful, Queen *Mary*; and if the second was unlawful, Queen *Elizabeth* must necessarily have been illegitimate.

I cannot but observe one passage to our present purpose, which I meet with in the time of Queen *Mary*. Sir *Edward Montague* first Lord Chief Justice of the Common-Pleas, and afterwards of the Kings-Bench (one who had the reputation of the ablest and wisest Lawyer of his Age,) being accused to have drawn the Will of *Edward* the VI. whereby that Queen was to have been disinherited, and being in great danger upon that account; drew up a State of his own Case, and therein sets forth, that the great reason which prevailed with him to obey the King in that particular, and upon which he did still rely for his indemnity, was, that if Queen *Mary* came to the Crown, she took it by force of the Act

Mores Report  
827. & 828.

Fullers Church-  
History, lib. 8.  
fol. 5.

of Parliament which did limit it to her in Remainder ; so that she came in as a Purchaser and not in privy of Estate to her Brother, and consequently could not punish Treasons or Offences committed in his time.

1 Mar. Parl. 2.  
cap. 2.

I must needs also observe, That in the Articles made upon the Marriage of Queen *Mary* with *Philip* of *Spain*, which were confirmed by Act of Parliament, the several Crowns and Territories of *Philip* are distributed part to *Charles* the Infant of *Spain*, part to the Issue of the intended Marriage. Whereby it does appear not only what opinion all *Europe* had of the Power of an English Parliament, but also that by the consent of the Estates of other Realms, Crowns might be limited and disposed out of the ordinary Course of Descent.

11 Eliz. c. 3.

11 Eliz. c. 15.

In the first Year of Queen *Elizabeth*, The Parliament recognize her Title to the Crown, with express Relation to the Statute 35 H. VIII. which invests it in her and the Heirs of her Body, and do enact that the Limitation made by that Statute shall stand and remain as Law for ever, and all Sentences, Judgements and Decrees to the contrary are declared to be void, and appointed to be cancell'd. And the several offences which are made Treason by another Statute in the same Year, are all restrain'd to the Queen and the Heirs of her Body only. The Parliament intending to extend that new Secutiry no further than her Estate in the Crown (which she took by that Parliamentary limitation) did extend.

13 Eliz. c. 1.  
Rast. Treason.  
27.

In Her Thirteenth Year it was Enacted, That if any Person claim Title to the Crown for himself or any other, during Life, or shall not upon Demand acknowledge her Right, *He shall be disabled during Life to have the Crown in Succession, as if he were naturally Dead.* And to affirm Right of Succession in such Claimer or Usurper, (after Proclamation made of such Claim or Usurpation,) is made Treason. Nor does the Statute stop there, but makes it Treason, during the Life of the Queen, and Forfeiture of all Goods and Chattels after her Decease, to affirm that the Queen, with and by the Authority



thority of Parliament, is not able to make Laws and Statutes of sufficient Force and Validity to limit and bind the Crown of this Realm, and the Descent, Limitation, Inheritance and Government thereof, or that this or any other Statute made by Parliament, with the Queen's assent, is not or ought not to be for ever of sufficient Force to bind and govern all Persons, their Rights and Titles that may claim any *Interest or Possibility in or to the Crown in Possession, Remainder, Inheritance, Succession or otherwise.* It were well if some rash Men, who presume in their Discourses to restrain the Power of Parliament, (that is, the King, Lords and Commons,) in the great Business of the Succession, would be so wise as to remember this Act, (which is still in force) and the Penalty to which they subject themselves by such sawcy Talk. That incomparable States-man the Lord *Burleigh* had another kind of opinion of the Security which an Act of Parliament could give his Royal Mistress, by making the *Scottish Queen (the Popish Successor of that time)* unable and unworthy of the Succession; as appears in a Letter which he wrote about this time to Sir *Francis Walsingham*, then Ambassador in France.

Compleat Ambassad. fol. 219.  
27 Eliz. cap. 11

In the Twenty-seventh Year of Queen *Elizabeth*, it was enacted, That if any Invasion was made, or Rebellion or other thing to the hurt of Her Person by, or for, or with the privity of any one who should or might pretend Title to the Crown, and the same should be adjudged in such manner as that Law appoints, then every Person against whom such Judgment should be given, should be *excluded and disabled for to have or claim the Crown*; And that the Subjects of this Realm lawfully might, by all forcible and possible means, pursue all such Offenders; And their Issues assenting or privy thereto, are in like manner disabled and to be pursued. And this Act was made in pursuance of an Association enter'd into by the People in the vacancy of the Parliament out of their great Zeal for the Preservation of the Life of that Excellent Princess.

By Virtue of this Statute *Mary Queen of Scotland* was afterwards Executed, as appears by the Commission for her Tryal.

Strangways  
Hist. of Mary  
Queen of Scot-  
land, fol. 179.

King

King *James* her Son who was a wiser Prince, and not wholly Govern'd by Priests as his Mother was, though he had the same pretences that she had, yet never disputed his Right, or set on foot any Title during the Life of the ever Renowned Queen; though she would never suffer him to be declared her Successor. He was too Wise to incur the like disability as his Mother had done, and to contest a Title establisht by Parliament.

After Queen *Elizabeth's* Death, The Act of Recognition made upon King *James* his coming to the Crown, doth particularly insist upon that Title, which was raised by Act of Parliament to *Henry* the VII. and the Heirs of his Body, and that immediately upon the Queen's decease the Crown descended and came to King *James*; so that you see the Title of Queen *Elizabeth* is again acknowledged by Parliament; And the entail made by the Statute of 35 *Henry VIII.* being spent upon her Death without Issue, King *James* comes in as next Heir to the old Entail made the First Year of *Henry VII.*

Thus have I set down before you the whole course of the English Succession as plainly, as truly, and as briefly as is possible. I shall leave every Man to make his own Observations on this Historical Deduction: But this one Observation I believe all Men must make from it, That it hath been the constant Opinion of all Ages, That the Parliament of *England* had an unquestionable Power to Limit, Restrain, and Qualify the Succession as they pleased, and that in all Ages they have put their Power in practice; and that the Historian had reason for saying, That seldom or never the third Heir, in a right Descent, enjoy'd the Crown of *England*.

*Daniel*, fol. 5.  
in vita H. 1.

It were as easie to shew, That in all other Kingdoms the next of Blood hath been frequently excluded from the Succession, but the History of our own Country is our Business; yet I cannot forbear reciting the Speech which Ambassadors sent from the States of *France*, made to *Charles* of *Lorrain*,



*Lorain*, when they had solemnly rejected him (though he was Brother to *Louys d'Outremes*, and next Heir to the Crown) and had Elected *Hugh Capet* for their King. They told him, That every one knew that the Succession of the Crown of *France* belonged to him, and not to *Hugh Capet*. But yet (say they) the very same Laws which give you this Right of Succession, do judge you also unworthy of the same; for that you have not hitherto endeavoured to frame your Manners according to the Prescript of those Laws, nor according to the Usages and Customs of your Country, but have rather ally'd your self with the German Nation, our Enemies, and have loved their vile and base Manners. Wherefore seeing you have forsaken the antient Virtue and Sweetness of your Country, we have also forsaken and abandon'd you; and have chosen *Hugh Capet* for our King, and put you back, and this without any Scruple of Conscience at all; esteeming it better and more just to live under him, enjoying our antient Laws, Customs, Privileges and Liberties, than under you the Heir by Blood, in Oppression, strange Customs and Cruelty. For as those who are to make a Voyage at Sea do not much consider whether the Pilot be Owner of the Ship, but whether he be skilful and wary; so our Care is to have a Prince to Govern us gently and happily, (which is the End for which Princes were appointed) and for these Ends we judge this Man fitter to be our King.

Gerr. 8<sup>th</sup> Mail.  
lib. 6. an. 988.

Certainly it were a most dangerous thing to have an Opinion prevail, That the King, in Concurrence with his Parliament, should not have Power to change the direct Order of Succession, though the Preservation both of him and his People did depend upon it. For it does directly tend to Anarchy, and makes the Government to want Power to defend it self, by making such Alterations as the Variety of Accidents in several Ages may make absolutely necessary. There must be a supreme uncontrollable Power lodged somewhere. And the Men who

E

talk

talk at this rate, can hardly find where it is lodged in *England*, if not in the King, Lords and Commons in Parliament.

But when a Man begins to ask a Reason of this Doctrine of theirs, that Proximity of Blood does give a Title unchangeable by any Humane Laws, the Teachers of it differ exceedingly; some of them tell us of a Divine Patriarchal Right, which Kings, as Natural Fathers of their People have derived down to them from *Adam*. And this Notion, though it be no older than the present Age, has been very frequent in Mens Mouths and Books, and has much pleased of late (as new things use to do.) But they consider not, that if this be true, there never can be but one Rightful Monarch in the Universe, That is He who is the direct and Lineal Heir of *Adam* then living. And thus these great Patrons of Absolute Power, instead of Supporting, do shake the Thrones of all the Princes in the World, since none of them at this Day can make out any such Title.

There are others, who being desirous to bestow upon the Crown a Complement of the like Nature, which they were at the same Time obtaining from it, have declared in general, That Monarchy is of Divine Right, That Princes succeed by the Laws of God, That their Title is not subject to any earthly Cognizance, nor owing to any Consent of the People. But the Consequences of this Opinion are not once consider'd by these Men, that thereby the Property of all Subjects, and the Laws of all Countreys are destroy'd together. For no humane Laws or Contracts can bind or restrain a Power divinely Instituted. (Or if you like it better in the Words of a great Cardinal) A Jurisdiction which is of Divine Right, is not alterable by the Will or Power of Man.

Card. Pullav.  
Hist. conc. Trid.  
l. 18. cap. 15.

Besides,



Besides, all Communities which live under another Form of Government, must be guilty of violating this Divine Institution. And perhaps there are few others besides the Great *Turks* Dominions, which are govern'd as they ought to be.

In what a damnable condition are the *Venetians* and the *Netherlands*, who admit no Monarch at all? *Poland* and the *Empire*, who Elect their Princes, and will not hear talk of this Divine Right of Succession?

*Aragon*, where they do not only Elect their King, but tell him plainly at his Coronation, that they will Depose him if he observes not the Conditions which they require from him, and have a settled Officer call'd *El Justitia* for that purpose? Nay, even *France* it self, which 'tis notoriously known, does exclude Women from this Divine Right?

That Government is of Nature, and derived from God, is manifest. Nothing is more natural in Man than the Desire of Society, and without Government Society would be intolerable. But can it be proved from hence, That the Government cannot be moulded into several Forms agreeable to the Interest and Dispositions of several Nations, and may not be varied from Time to Time as Occasion requires, by the mutual Consent of the Governours, and of those who are Governed?

And after all Pretences of this kind, let any place of Scripture be produced wherein God obliges a People to this or that Form, till they have first obliged themselves to it by some Act of their own?

I do agree, that if God by any extraordinary Revelation has ordain'd any sort of Government, or by any immediate Denomination has conferr'd a Kingdom on any

Family, and has directed in what Order the Crown shall descend, that all Men are bound to submit to it and acquiesce in the Divine Will, as soon as it is clearly and evidently made out to them; but they must not be angry if Men expect such an Evidence.

There is a third sort of Men, who tell us, This Realm being entirely subdued by the Conquerour, and by him left to descend to his Heirs, none of these Heirs who derive a Title under him, can deprive those who are to succeed of any Right which they ought to have, but must leave the Crown as free to them as they themselves received it from their Ancestors.

I will not here insist upon the Danger that any Prince runs into, who founds his Title in Force; because it will be hard to prove, that such a one does not leave as good a Title open for every Man who can make himself strong enough. Nor need I trouble my self to shew, that all Conquest does not put the Conqueror into an Absolute Right. Though it be most evident in the Case of *William the First*, who did by his Sword prosecute a Claim of another nature, and meant only to acquire that Right, and after Conquest rested in it. He pretended to the Crown as the Gift of King *Edward*, and to vindicate that Title he enter'd with Arms. And though his Relation to the Crown was more remote than that of *Edgar Atheling*, (then a Child) yet his Title was better than *Harold's* the present Usurper, who could pretend no Kindred at all, and who had himself sworn to support the Grant to *William*. Nor did he claim a Power by Conquest, (tho' the Name of Conquerour was given him by after Times, says *Daniel*) but submitted to the Orders of the Kingdom, desirous rather to have his Testamentary Title, than his Sword to make good his Succession. But I will admit, that he made an absolute Conquest, and then these Men will grant, that he might himself dispose of this Conquer'd Kingdom. Therefore if he did not leave it to descend



scend in such a manner as they would have it go, nor did institute any such sort of Succession, surely this Argument of theirs will fall to the Ground. Now 'tis plain, that he never design'd that the Crown should descend, but gave it to his second Son, and thereby gave an example of *excluding and pretermittting the unworthy.*

Lastly, Others object, That the Fundamental Laws of the Land against which no Act of Parliament can be of Force, have so establish'd the Succession that the Course of it cannot be alter'd. This is surely a new Discovery unknown to our Fore-fathers, as the foregoing History does abundantly prove. But let these Objectors be asked, By what Authority these imaginary Laws were made? For if an Authority equal to that which made them be still in being, that Authority may certainly repeal them whenever it pleases to exert it self. If the King alone made them, no doubt but that he may change them too. If they will say, they were made by the diffusive Body of the People, they run before they are aware into the Guilt of Worshipping that Idol, the Multitude, and make a great Step towards placing the Foundation of the Government upon Contract and Consent. But then let them produce those Laws or some Authentick Memorial of them, before it be exacted from us to believe there were ever any such.

Yes, they will say, there is such an ancient Law acknowledged by all the Judges, and known to every Man, That the Descent of the Crown purges all Defects whatsoever. This Maxim as it is usually repeated in these Words, and this might be admitted, and yet could not be pertinently apply'd to a Case where the Descent it self is prevented by a Law. But I will not take advantage of their Words, but will consider the Objection, as it stands in that Book where the first mention of it was made, and that is in the *Year-Book* of Henry the VII. it being said there by the Judges, That the King was a Person Able

and

*1 Hen. 7. f. 4. b.  
Que le Roy fu-  
ist person able  
& discharge d'  
aucun attrainder  
eo facto qu' il  
priit sur lui le  
Reign & estre  
Roy.*

and Discharged of any Attainder *eo facto*, that he took upon him the Government, and to be King.

First, This was not only an extra-judical Opinion, but was not pertinent to the Question referr'd to their Consideration, *viz.* Whether those who were chosen into the *House of Commons*, and were at that time attainted of Treason might sit in Parliament, till their Attainders were Reversed; and they all agree, that their Attainders should first be annull'd. But then they proceeded to say, That there was no necessity that the King's Attainder should be Reversed, for that he might enable himself, and needed not any Act of Reversal. But surely they said very wisely in what they said; for he who had won a Crown in the Field, had gone a great way towards enable himself to wear it. Most sure it is, that if an Act of Reversal were necessary before he could sit, that then it was impossible he ever should sit there, because no such Act could be made without the Royal Assent. *Henry VII.* was then King *de facto*, and in possession of the Throne, and it was somewhat of the latest to consider whether he was qualified or not. Certainly it had been strange self-denial in the Judges, and a neglect of themselves, (which is not usual with them) to have alledged an incurable Disability in the King, from whom they had their Patents and Authority.

In the next place let us consider what precedent the Judges cite to justify this Opinion of theirs, and how apposite it is. *Henry the VI.* being driven out of the Kingdom by *Edward the IV.* The Conqueror call'd a Parliament, and got an Act to pass, whereby *Henry* was disabled to hold the Crown. About Ten Years after, *Henry* regains the Kingdom, and upon this re-accession to the Crown (as 'tis usually call'd) This Act is never repeal'd. But does not every Child see the Reasons of it? for if *Henry* was Lawful King, (and before he was not to doubt that) The Act it self was void in as much as it wanted the Royal Assent. So that for him to have  
procured



procured an Act of Repeal had been to affirm a Title to the Crown in *Edward*. But without doubt this Opinion of the Judges as it is apply'd by the Objectors, was new and unheard of before. We see the King of *France* was otherwise informed by the learned Men in the time of King *John*, for they they thought his Blood corrupted, and him incapable of taking the Crown by Descent, because he was Attainted of Treason, which prevailed with that King to send over his Son *Lewis*, to put in his claim in right of his Wife, who was the next Heir. It also ought to be observed, that the true Reason why the generality of the Nation did so long approve the Title of the House of *Lancaster*, was because all the Princes of the House of *York* were Attainted of Treason, and their Blood corrupted. But as soon as ever this corruption was purged, and *Richard* Duke of *York* was declared Heir Apparent by Parliament, the People soon forsook the *Lancastrians*, and set the House of *York* in the Throne.

Mat. Westm.  
275. ubi supra.

Nay, the very learned Men of the same Age with these Judges, thought quite otherwise, as will appear beyond Contradiction in this famous Case which follows. *Richard* III. had two Elder Brothers, *Edward* and *George* Duke of *Clarence*. *Richard* designing to secure the Crown to himself, had procured the Children of *Edward* to be declared Illegitimate, yet still the Duke of *Clarence* had Issue living which might pretend. But observe what the Parliament say (as to this) in the first Year of *Richard* III.

“ That in the Seventeenth Year of *Edward* IV. *George*  
 “ Duke of *Clarence* was Attainted of Treason, by reason  
 “ whereof all the Issue of the said *George* was, and is  
 “ Disabled and Barred of all Right and Claim, that in  
 “ any case he or his Issue might have or challenge by In-  
 “ heritance to the Crown and Dignity Royal of these  
 “ Realms. After that we consider that you be the un-  
 “ doubted Heir, &c. And so they proceed, affirming  
 “ that all learned Men in the Laws do approve his Title.

V. Sup. & Cott.  
Rec. 709.

You

You see within less than Three Years before this Opinion of the Judges, The whole Parliament do not only give their Opinion, but assure you that all learned Men of that Time, held clearly that an Attainder did hinder the Descent of the Crown, and incapacitate the Person to take it. Nay, what goes yet further in this Matter, *Richard* himself, though he was as jealous to secure his Title as ever Tyrant was, and had as good Advice to discern the most distant Danger; though he was always restless in endeavouring to get the Earl of *Richmond* into his Hands, who was a very remote Pretender, and only descended from a Bastard of the House of *Lancaster*, yet he fear'd nothing on this side. He knew how he had wrong'd the Children of his Brother *Edward*, and could not be at ease till he had sent them out of the World, but he let the Children of his Brother *Clarence* live, without apprehending any Danger from them because their Blood was corrupted, and all Possibility of Descent taken from them by the Attainder of their Father. It was this only preserved them alive, and not any Remorse of Conscience, or any Niceness in sending another Nephew out of the World after those whom he had dispatch'd before. This notable Case attended with these Circumstances, will convince every Man, either that the Judges intended no such thing by their Opinion, as some Men fancy, or else at least that extra-judicial Opinion were then as Apocryphal as they have been since.

Consider Lastly, The unreasonableness of the Doctrine which tends directly to subvert Government, and to put the Life of the King Regnant into the Hands of his Successor. The next Heir may commit Rapes and Murders and Treasons, Burn Cities or Betray Fleets, may conspire against the Life of his Prince, and yet after all, if by *Flight* or *Force* he can save himself, till some of his Accomplices can get the King dispatcht, in spite of all Laws and Justice he must come to the Crown, and be Innocent.

But



But when I reflect what sort of Men I am arguing with, and how willingly they use to submit to Authority, I think I shall convince them best by citing the Opinions of two great Men, the one a Cardinal, and the other a Lord Chancellor, both of them Martyrs for the Papal Supremacy, I mean *Fisher* and *Sir Thomas Moor*. And if their Judgements approve the Power of Parliaments in the business of the Succession, it cannot but weigh very much on such occasions as this. 'Tis well known how resolutely even to Death they refused the Oath of Succession which the Parliament had framed, because therein the King's Supremacy was avow'd, and therefore they cannot be suspected to dissemble, when at the very same time they declared, That if that of Supremacy was left out, they would willingly Swear an Oath to maintain the Succession of the Crown to the Issue of the King's present Marriage, as it was then established by Parliament, and gave this reason for it, That this was in the Power of a Parliament to determine; but not who was Supreme head of the Church. *Sir Thomas Moor* went further, and own'd a very strange Opinion of their Power in this Point; but he says expressly at the same time, That the Parliament had unquestionable Authority in the ordering of the Succession, and that the People were bound to obey them therein.

Burnet's Hist.  
Ref. lib. 2. fol.  
156.

After the Testimonies of these two great Papists, it will be little to add the Testimony of a Protestant; but yet I will mention what *Sir Walter Rawleigh* (who was no inconsiderable Man, though a Protestant) says in his incomparable Preface to the History of the World: "Without doubt (says he) Humane Reason would have judged no otherwise, but that *Henry IV.* had rendred the Succession as unquestionable by the Act of Parliament which he had procured to entail it on his Issues, as by his own Act he had left his Enemies powerless.

F.

But

But sinking Men catch hold of every thing, and when they cannot object to the Validity, they will tell us, That such an Act of Parliament to disinherit the next Heir is unjust and without a sufficient ground.

I will not at present enter into the Dispute how far the Difference of Religion, which will also necessarily draw on a Change in the Government, does justify Men in seeking to preserve the two dearest things on Earth in an orderly and lawful way. I will not (though I safely might) challenge these Men to tell me where ever any settled Nation which had Laws of their own, and were not under the immediate Force of a Conquerour, did ever admit of a King of another Religion than their own. I will not insist on it that the Crown is not a bare Inheritance, but an Inheritance accompanying an Office of Trust, and that if a Man's Defects render him incapable of the Trust, he has also forfeited the Inheritance. I need not say how far a Nation is to be excused for executing Justice summarily, and without the tedious Formalities of Law, when the Necessity of things requires haste, and the Party flies from Justice, and his Confederates are numerous and daring, and the Prince's Life in danger.

But this I will say, that if the Parliament have Power in this thing, which I need not prove, by shewing that the ordinary Course of Law allows Heirs to be disinherited by Fines and Recoveries, and that the Parliament in all Ages has frequently done it by making Acts to alter the strongest Settlements, where Equity has Dictated it, though the Heirs were never in any wise Criminal. There, according to Sir *Thomas Moor's* Opinion, the People are bound in Conscience to obey their Laws, and must not pretend to enquire whether they were made upon just grounds. For by the same Reason they may pretend that all other Laws were made without just Cause, and refuse Obedience to any of them. And surely



ly those that should do so, would be an excellent *Loyal Party*. God defend this Nation from such Loyalty, as opposes it self to the King and the Laws ; and God defend the King from the pretended Duty and Submission of those Men, who whilst they talk of his Power so much, Renounce it openly, and Oppose what would be the greatest Security of his Person, and in effect set up his Successor above him, even in his Life-time.

F I N I S .

